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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/174,042	10/16/98	HIRATH J	ZIP-97-P-413

PM92/0519

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EXAMINER	
ANDERSON, G	
ART UNIT	**PAPER NUMBER**
3636	11

DATE MAILED: 05/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/174,042	Applicant(s) Hirath et al
	Examiner Jerry A. Anderson	Group Art Unit 3636

☒ Responsive to communication(s) filed on *13 Mar 2000*.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *three* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-14* is/are pending in the application.

Of the above, claim(s) *13 and 14* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-12* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). *10*

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 13 March 2000 have been fully considered but they are not persuasive. The applicant's allegations that Parker is not suitable for surrounding a vacuum-tight space and that the connections between parts of a device which can be evacuated are not necessarily vacuum-tight and, in the last paragraph of page 3, that the construction of Parker "prevents vacuum-tight connection of the metal parts". The Examiner does not agree. These allegations are not supported by any factual evidence. The applicant alleges that the configuration Parker does not permit "the tolerance equalization feature of the invention". It is noted that nothing in claim 1 defines this feature either. The applicant's argues that Parker is unrelated to heat-insulating walls. Because Parker discloses every element of the applicant's claims this argument is moot. An invention is entitled to all the uses to which it can be applied.

The applicant's allegations that Schmidberger is "irrelevant" and that Schmidberger is relevant "to the support of two unstable plastic panels". The Examiner believes that in the applicant's device the flanged tube is relevant to the support of two panels too. The applicant argues that "flange-shaped windings of tubes" are not relevant "where bushings are positioned". Actually the Examiner cannot see a patentable difference between the so-called "windings" and bushings. It is noted that the claim 1 calls for "a tube section ... having a circumferentially positioned flange-shaped expanded and flattered region" which is not the same thing as a "bushing".

The applicant also distinguishes between vacuum-insulation technology and any other insulation technology. The Examiner views said vacuum-insulation technology as a subdivision of insulation technology as a whole and therefore within the preview of one having an ordinary skill in art of insulation technology.

The applicant discusses the cup-shaped form element of Babbitt. The applicant fails to address the discloser of a pipe 25 connecting the panels by an airtight joint.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 11 and 12 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Parker. The board of Parker can be evacuated.

Claims 1-7, 11 and 12 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Schmidberger.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 8-10 are rejected under 35 U.S.C. § 103 as being unpatentable over Schmidberger in view of Babbitt. Schmidberger is cited showing an insulated housing with a flange tube. Schmidberger, fails to describe in English whether the housing walls and tube are steel and welded. Babbitt is cited showing a evacuated insulating unit of any material and connected by welding for the purpose of providing a vacuum insulating unit. Since the references are from the same field of endeavor the purpose of Babbitt would have been obvious in the pertinent art of Schmidberger and it would have been obvious for one having an ordinary skill in the art to have modified Schmidberger with any material and connected by welding for the purpose of providing a vacuum insulating unit in view of Babbitt.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Gerald Anderson whose telephone number is (703) 308-2202.

gaa
May 10, 2000

Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600